

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Plaintiff,

Criminal 03-297 (2) (RHK/AJB)

Civil No. 05-519 (RHK)

vs.

ORDER

Yadira Perez-Beltran,

Defendant.

On December 17, 2003, Defendant entered a plea of guilty to conspiracy to distribute more than 500 grams of methamphetamine and was sentenced to 46 months in prison, which was the low end of the applicable guidelines range. She did not appeal her sentence.

Now before the Court is her § 2255 Petition alleging Blakely and Booker violations and a claim of ineffective assistance of counsel.

With respect to the claim of ineffective assistance of counsel, she provides only conclusory allegations to the effect that counsel gave her incorrect advice at sentencing and lied to her. Such conclusory allegations are insufficient to support a § 2255 Petition. See United States v. Delgado, 162 F.2d 981 (8th Cir. 1998). In addition, a review of the transcript of her change of plea hearing clearly demonstrates that she consulted with counsel, was satisfied with her representation, understood the terms of the plea agreement and had no questions concerning any aspect of the proceedings.

Her Booker/Blakely claims are foreclosed by the recent decision of the Eighth Circuit in Never

Misses a Shot v. United States, ___ F.3d ___, 2005 WL 1569403 (8th Cir. 2005), holding that Booker does not apply to criminal convictions that became final before the rule was announced, and thus does not benefit movants in collateral proceedings.

Accordingly, and upon all the files, records and proceedings herein, **IT IS ORDERED** that the Motion to Vacate (CR-03-297, Doc. No. 167; CV-05-519, Doc. No. 1) is **DENIED**.

Dated: July 26, 2005

s/Richard H. Kyle
RICHARD H. KYLE
United States District Judge